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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

NO. 518

WILLIAM A. CROWE, Trading as
WILLIAM A. CROWE COMPANY,
Petitioner,

v.

RAGNAR BENSON, INC.,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTION PRESENTED

Is an Order by a District Court, under Rule 60(b), Federal Rules of Civil Procedure, granting a motion to vacate a default judgment interlocutory and, therefore, not appealable where it appeared (a) that a very large money judgment had been entered by the Clerk for default of an appearance and answer, (b) where the defendant has a full and complete defense on the merits, (c) that no intervening rights appear to have been prejudiced, (d) that no significant reason had been raised for precluding a trial on the merits, and (e) that plaintiff's counsel, knowing the identity of defendant's counsel and having conducted negotiations for settlement with him, nevertheless proceeded to secure default judgment?

STATEMENT OF THE CASE

The decision of the United States Court of Appeals for the Third Circuit, concerning which petitioner seeks a writ of certiorari, affirmed the Order of the District Court entered September 12, 1961 in granting respondent's motion under Rule 60(b), Federal Rules of Civil Procedure, to vacate a default judgment in the amount of $35,603.37 entered on February 13, 1961 (A. 2a, 58a-59a).[1] The default judgment was entered by the Clerk of the District Court under Rules 55(a) and (b) in an action by petitioner for compensation for additional work and services alledgedly rendered by him under a contract between respondent and petitioner dated July 31, 1958 in connection with the construction of the Gateway Park Garage, Gateway Center, Pittsburgh, Pennsylvania.

The respondent on September 8, 1961 filed its motion to vacate the default judgment setting forth the facts upon which it based its request for this relief (A. 8a-34a). The motion was supported by an affidavit by Samuel Y. Stroh, counsel for the respondent, that the facts set forth therein are true and correct. On September 12, 1961, a hearing on said motion was held before the Honorable Wallace S. Gourley, Chief District Judge. The respondent's motion was heard on the basis of the facts set forth in the motion as supported by the accompanying affidavit and on the basis of the statements made by the counsel for the petitioner and the counsel for the respondent during the hearing (A. 52a-53a).

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1. "A" refers to the Brief and Appendix for Appellant filed in the Court of Appeals. "AE" refers to the Brief and Appendix for Appellee filed in said Court.

The motion to vacate judgment under Rule 60(b), Federal Rules of Civil Procedure, and to stay proceedings under Rule 62, Federal Rules of Civil Procedure, set forth the following reasons for relief: that the complaint in this case was filed and summons issued thereon on June 6, 1960, and service was made on respondent on June 7, 1960; that on June 17, 1960 respondent retained Samuel Y. Stroh, Esq. to represent it in its defense to said action; that on June 17, 1960, respondent's counsel telephoned Vincent M. Casey, Esq., attorney for the petitioner, and advised him that he was counsel for the respondent; that the parties orally agreed that respondent's counsel be allowed additional time to file an answer to the complaint; that thereafter, respondent's counsel wrote a letter dated June 17, 1960 to petitioner's counsel confirming said telephone conversation and requesting that petitioner's counsel sign and return a copy of said letter to him agreeing to an allowance of additional time to file respondent's answer; and that on June 21, 1960, petitioner's counsel wrote a letter to respondent's counsel returning therewith a copy of the letter from respondent's counsel dated June 17, 1960 duly signed by him on June 21, 1960 and agreeing to consent to a formal Order of Court extending the time within which to file said answer for a reasonable period of time.

In its motion, respondent further alleged that counsel for respondent had inadvertently not filed an appearance or defensive pleading to the complaint in this action for the following reasons (A. 9a-11a): (a) that between June 17, 1960 and September 1961, respondent's counsel had had several conversations with petitioner's counsel wherein it was orally agreed that he would be given addi-

tional time within which to file said answer, (b) that during said conversations counsel for the parties had discussed the possibility of effecting a mutually satisfactory settlement and had agreed to discuss such possibility of settlement with their clients, (c) that petitioner's counsel at no time prior to February 13, 1961 had given any notice, oral or written, to respondent's counsel that he intended to proceed under Rule 55(a) to request the Clerk of the District Court to make an entry of default and under Rule 55(b)(1) to request the Clerk to enter judgment by default, (d) that between the period from February 13, 1961 to September 1, 1961, when respondent's counsel first learned of the default judgment when garnishment proceedings were instituted by counsel for petitioner, petitioner's counsel had not given any notice, oral or written, to respondent's counsel that he had secured default judgment against respondent on February 13, 1961, (e) that respondent's counsel had had a conversation with petitioner's counsel at some date in March or April, 1961 (after entry of the default judgment), wherein petitioner's counsel orally agreed that respondent's counsel could have additional time to file said answer, and at no time during this conversation did he notify respondent's counsel that default judgment had been entered on February 13, 1961, (f) that between June 17, 1960 and September 1, 1961, respondent's counsel had investigated the case preparatory to the proposed filing of an answer to the complaint and preparatory to determining whether or not the claim should be amicably settled, (g) that between June 17, 1960 and September 1, 1961, respondent's counsel had been unable for certain periods of time to devote all his attention to his practice due to the serious illnesses of his mother and wife, and

(h) that respondent's counsel first learned on September 1, 1961 that entry of default and entry of default judgment had been rendered against the respondent on February 13, 1961, when attachment executions were issued against respondent's bank accounts at the Gateway Center Branch of the Pittsburgh National Bank and the Gateway Center Branch of Mellon National Bank and Trust Company, both of Pittsburgh, Pennsylvania.

In its motion, the respondent further averred that it has a complete, valid and substantial defense upon the merits to the petitioner's action, that it had intended to file this defense provided that an amicable settlement had not been reached, but did not do so under the mistaken belief or misunderstanding between counsel for respondent and counsel for petitioner that counsel for respondent would be allowed additional time to file an answer to the complaint and to explore with respondent the possibility of effecting an amicable settlement of petitioner's action. Respondent's counsel did not file an answer to the complaint because he mistakenly supposed that he would not have to do so as long as settlement negotiations were still in progress (A. 12a).

In its motion, respondent alleged that it has a complete, valid and substantial defense upon the merits to petitioner's action because (a) the additional services allegedly rendered by petitioner were embraced within the terms of the original contract, (b) the additional services allegedly rendered by petitioner were not in fact performed by him as alleged in the complaint, and (c) the charges made for alleged additional services were not reasonable charges. Further, respondent claimed that it has a counterclaim arising from the petitioner's breach

of the contract in failing to complete performance within the time provided in the contract and otherwise failing to perform in accordance with the terms of the contract and the specifications and drawings appurtenant thereto. Respondent attached to its motion a copy of its proposed answer and counterclaim (A. 12a-13a, 18a-33a).

Further, in its motion, respondent alleged that the default judgment entered by the Clerk of the District Court pursuant to Rule 55(b)(1) on February 13, 1961 was void for the reason that the petitioner's claim against the respondent was not for a sum certain or for a sum which by computation could be certain (A. 13a-14a).

Further, in its motion, respondent alleged as further grounds for relief: (a) the enforcement of the default judgment would result in an unjust enrichment to the petitioner, and (b) the respondent's delay in filing an answer to the complaint had not prejudiced the petitioner (A. 14a).

The following facts were developed at the hearing on September 12, 1961 on respondent's motion before the District Court, which had the entire record in the case before it (A. 36a-37a): (1) that respondent's counsel had not entered a formal appearance or an answer before February 13, 1961 when petitioner's counsel had actual notice that Stroh had been retained as counsel by respondent and had discussed the possibility of an amicable adjustment of petitioner's action; (2) that, even though he knew that Stroh was respondent's counsel, petitioner's counsel nevertheless (a) before February 13, 1961 gave him no notice, oral or written, that he intended to take default judgment, and (b) after February 13, 1961, gave him no notice, oral or written, that he had

done so; (3) that, although petitioner's counsel knew that Stroh was counsel for respondent, he did not advise the Clerk's office that respondent was represented by counsel when he applied for the entry of default judgment on February 13, 1961; (4) that respondent did not learn that the default judgment had been entered on February 13, 1961 until about September 1, 1961, when attachment executions were served on the respondent and upon the garnishee banks; (5) that a substantial amount was involved in this litigation—$35,603.57; and (6) that there were no superseding or intervening equities that would make it unjust to grant the requested relief.

After argument upon the motion, the District Court entered an Order granting the prayer of the motion and vacating the default judgment on condition that respondent's counsel pay for the use of petitioner's counsel the amount of $750.00 within three days from September 12, 1961 (A. 52a-54a, 58a-59a). Petitioner on September 26, 1961 appealed to the Court of Appeals from this Order.

In a Memorandum Order entered November 13, 1961, the District Court states its reason for vacating the default judgment (AE 1b):

> "While serving as Miscellaneous Judge, upon petition of counsel for the defendant this Court vacated entry of default judgment for the reason that the Court was of the view that since negotiations had previously been conducted by counsel for the parties and since counsel on behalf of the plaintiff knew of the indentity of defendant's counsel and nevertheless proceeded to secure default judgment without apprising a fellow member of the bar of said

fact or failing to have notice given to him through the United States Clerk of Courts, it was my judgment that the interests of justice required that said default judgment be lifted."

Respondent on December 4, 1961 filed a Motion to Dismiss the Appeal on the ground that the Order appealed from was interlocutory and, therefore, not appealable (AE 3b-6b). After argument before this Court, consisting of McLaughlin, Kalodner and Hastie, Circuit Judges, on December 18, 1961, this Court in a Per Curiam Opinion filed January 9, 1962, affirmed the Order of the District Court vacating the default judgment, stating that:

"... under all the circumstances we are not prepared to say that the District Judge abused his discretion in opening the judgment." (AE 7b).

Petitioner, thereafter, on February 2, 1962 filed a petition for Rehearing. This Court, consisting of McLaughlin, Kalodner and Hastie, Circuit Judges, on March 9, 1962, vacated the Opinion and judgment in his case, filed January 9, 1962, and ordered this Appeal to be listed for hearing on the merits in the week of May 14, 1962 (AE 9b).

The Court of Appeals, after argument thereupon on May 15, 1962, affirmed the judgment of the District Court. The Court of Appeals thereafter on September 10, 1962 denied petitioner's Petition for Rehearing.

REASONS WHY THE WRIT SHOULD BE DENIED

The Court of Appeals in affirming the Order of the District Court stated (307 Fed. 2d 73, at page 75):

> "At the outset, it should be noted that plaintiff does not contend that the District Court acted beyond its jurisdiction in vacating the default judgment as was the case in Demeretz v. Daniels Motor Freight, —F.2d— (3d Cir. 1962). Plaintiff asserts only that there was an abuse of discretion and certain procedural irregularities. With respect to these contentions, we need only say that we do not reach them since the Order of the District Court vacating the default judgment is a nonappealable interlocutory order, and accordingly we are without jurisdiction to entertain this appeal. United States v. Agne, 161 F.2d 331 (3d Cir. 1947)."

Petitioner here urges the granting of the writ of certiorari on two grounds: (1) that the Court of Appeals for the Third Circuit allegedly incorrectly applied the law on this subject applicable in the Third Circuit; and (2) that there is allegedly a conflict between the various Courts of Appeals on the issue of the appealability of an Order granting a motion to vacate a default judgment.

1. The Order Vacating the Default Judgment Was Not Appealable Under the Decisions in the Third Circuit.

The first reason for granting the writ submitted by the petitioner is that the Order vacating the default judgment was appealable under the Court of Appeals decision in *Tozer v. Krause Milling Co.* (3 Cir. 1951), 189 F.2d 242. Petitioner in advancing this reason over-

looks two material points: (a) that a conflict in the decisions in a Circuit Court of Appeals is not a reason for the allowance of a writ of certiorari under Supreme Court Rule 19(b), and (b) that the facts in the *Tozer Case* were not similar to those in this proceeding. In disposing of the minority opinion of McLaughlin, Circuit Judge, dissenting, that "The setting aside of the judgment in this case was an abuse of discretion and arbitrary." (and) Therefore it is appealable", Kalodner, Circuit Judge, in the majority opinion, stated:

> "We cannot subscribe to the view expressed in the dissenting opinion that the Order vacating the default judgment is appealable under Tozer v. Krause Milling Co., 189 F.2d 242 (3d Cir. 1951). In that case the District Court *dismissed* a motion by the defendant to set aside a default judgment and the appealability of the District Court's action was not at issue since it was a 'final decision' in that it *terminated* further proceedings. In the instant case the order vacating the default judgment was interlocutory inasmuch as it contemplated further proceedings in the lower court".

Therefore, respondent submits that, even assuming that the reason herein advanced by petitioner were a ground for granting certiorari, nevertheless, the decision rendered by the Court of Appeals in this case was and is not in conflict with the decision of that Court of Appeals on the same matter in *Tozer v. Krause Milling Company, supra.*

2. That the Court of Appeals Decision in This Case Is Not in Conflict With the Decisions of Other Courts of Appeals on the Same Matter.

Petitioner contends that the decision below conflicts with the decisions of other Courts of Appeals on the same matter. Petitioner, however, misstates the issue involved in this case. Petitioner contends that there is a conflict among the Circuits as to whether an Order opening a default judgment entered arbitrarily and by a Judge who abuses his discretion is final and appealable. The matter involved in this case is, as stated by the Court of Appeals, whether the Order of the District Court vacating the default judgment is a nonappealable interlocutory order.

The Court of Appeals had no statutory jurisdiction to review at this stage an Order of the District Court granting defendant's motion under Rule 60(b) of the Federal Rules of Civil Procedure to vacate the default judgment theretofore entered by the Clerk of the District Court.

As stated by the Court of Appeals for the Third Circuit in *United States v. Agne*, 161 F.2d 331 (3d Cir. 1947), at pages 331-332:

> "The first question presented to us on the appeal and the one which we think concludes the matter at this stage of the proceeding is whether the order is appealable. No citation of authorities is necessary for the proposition that the jurisdiction of a Circuit Court of Appeals is statutory. Unless the cause comes to us within the statutory grant of power we have no authority to deal with

it. Certain interlocutory orders are by statute made appealable, but no one suggests that the present case falls within any of these."

Cf. *Sleek v. J. C. Penney Co.* (3d Cir. 1961) 292 F.2d 256.

The general grant of appellate jurisdiction to review by appeal final decisions of the District Courts is found in Title 28 US.C., Sec. 1291:

§ 1291. *Final decisions of district courts*

The courts of appeals shall have jurisdiction of appeal from all final decisions of the district courts of the United States District Court for the District of the Canal Zone, the District of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. As amended Oct. 31, 1951, c. 655, § 48, 65 Stat. 726; July 7, 1958, Pub. L. 85-508, § 12(e). 72 Stat. 348.

The grant of appellate jurisdiction to review by appeal certain interlocutory decisions of the District Courts if found in Title 28 U.S.C., Sec. 1292, which, briefly, states:

"The Court of Appeals shall have jurisdiction of appeals from

(1) Interlocutory orders of the district courts of the United States . . . granting, continuing, modifying, refusing or dissolving injunctions.

(2) Interlocutory orders appointing receivers, or refusing orders to wind up receiverships . . .

(3) Interlocutory decrees . . . determining the rights and liabilities of the parties to admiralty cases . . .

(4) Judgments in civil actions for patent infringement . . .

(b) When a District Judge, in making a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order . . ."

Barron & Holtzoff, Federal Practice and Procedure, Wright ed., Volume 3A, Section 1552, pages 56-57, summarizes the decisions of District Courts reviewable by Courts of Appeals as follows:

"The courts of appeals have jurisdiction of appeals from final decisions of district courts except those reviewable on direct appeal to the Supreme Court. Some interlocutory decisions are appealable. The statute providing for appeals from interlocutory decisions is neither augmented nor diminished by these rules which regulate procedure and having nothing to do with jurisdiction."

See also *Barron & Holtzoff, Federal Practice and Procedure,* Wright ed., Volume 3, Section 1332, pages 433-438; and *Moore's Federal Practice,* Volume 7, 2d Ed. (1955), page 334.

Reasons Why the Writ Should Be Denied.

In *Weilbacker v. Winchester & Co.* (2d Cir. 1952), 197 F.2d, 303, the Court of Appeals for the Second Circuit said at page 305:

> "At the outset we must determine whether the order appealed from is a final order within the purview of Sec. 1291 of the Judicial Code. 28 U.S.C.A. § 1291. Obviously, the objective of that section is to forestall appellate review when the decision below has but an inconclusive effect on the final outcome of the litigation. This is best illustrated in the example of a motion, also under Rule 60(b), to reopen a default judgment. Thus, the denial of such a motion is a final order. Tozer v. Charles A. Krause Milling Co., 3 Cir. 189 Fed. 2d 242, for by its decision the district court has indicated that no further action will be taken at that level which will change the outcome and unless the order is appealable the controversy is at an end. On the other hand, the granting of the motion is not reviewable. United States v. Agne, 3 Cir., 161 Fed. 2d 331, since the ultimate disposition of the case may not be affected thereby."

In *Stathatos, et al. v. Arnold Bernstein S. S. Corp.* (2d Cir. 1952), 202 F.2d 525, the Court of Appeals for the Second Circuit said at page 527:

> ". . . while denial of a motion under F. R. 60(b) may lead to an appealable order of the grounds therein taken, see United States v. Wissahickon Tool Works, 2 Cir., 200 F.2d 936, it seems apparent, as stated in 3 Moore's Federal Practice 3278, 1st Ed. 1938, that grant does not. At most the process

leads only to a new trial, a step settled to be not reviewable. See Barbarino v. Stanhope S. S. Co., 2 Cir. 150 Fed. 2d 54, F. R. 59, 73(a)."

The decisions cited by the petitioner do not support his contention that the decision in this case conflicts with the decisions of the other Courts of Appeals on the same matter:

In *Western Union Telegraph Company v. Dismang* (10th Cir. 1939), 106 F.2d 362, the question of the appealability of an Order vacating a default judgment was not even raised. The *Western Union Case* involved an action for personal injuries, where a jury had originally rendered a verdict for the plaintiff and the Trial Judge thereafter, after concluding that a motion for a directed verdict should have been sustained, set aside the jury's verdict and rendered judgment for the defendant. The District Court therein, acting upon plaintiff's request to dismiss the cause without prejudice, ordered the judgment for defendant to be set aside. The Telegraph Company appealed from the latter Order. The sole issue in that case was one of jurisdiction—namely, whether the District Court had jurisdiction to dismiss without prejudice after having rendered judgment for defendant.

General Telephone Corporation v. General Telephone Answering Service (5th Cir. 1960), 277 F.2d 919, involved a default judgment entered in favor of the plaintiff in an action for injunctive relief. The District Court entered an Order granting the motion of defendant to set aside the default judgment. The Court of Appeals for the Fifth Circuit held that where default judgment, entered by a District Court without a hear-

ing and without proof of any kind, was a completely drastic judgment with wide and comprehensive injunctive effect, and if there was in reality a defense to the sweeping claim of plaintiff, it would be a great injustice for judgment to stand, the District Court did not abuse its discretion in vacating the default judgment. The question of the appeal of the Order vacating the default judgment was not raised before the Court of Appeals, apparently for the reason that the jurisdiction of the Court of Appeals to entertain appeals for interlocutory orders of District Courts dissolving injunctions is based upon Title 28 U.S.C. Sec. 1292.

Altrichter v. Shell Oil Company (8th Cir. 1959), 263 F.2d 377, clearly does not support petitioner's contention. This was an action brought by plaintiff to recover damages for personal injuries. At the first trial a verdict was rendered for plaintiff in the sum of $27,500.00. Defendant moved for a judgment notwithstanding the verdict, or for a new trial. The District Court granted the motion for new trial. A second trial was had, resulting in a verdict for defendant. The appeal was by the plaintiff from the judgment entered on the jury's verdict. The Court of Appeals in the *Altrichter Case* merely stated that the ruling on the motion of defendant after the first trial presented a question of law reviewable on appeal after the second trial. It stated that:

> "... If this ruling of the court constituted error as a matter of law, then plaintiff would be entitled on this appeal to have the original verdict and judgment returned and entered on the first trial of the case restored ..." (263 F.2d 377, 379)

It is apparent, therefore, that petitioner herein did not lose his right to appeal from the Order of the District Court vacating the default judgment. This right of review is merely held in abeyance until after a trial on the merits and an adverse judgment against the petitioner.

In *Tsai v. Rosenthal* (8th Cir. 1961), 297 F.2d 614, the plaintiff appealed from an Order of the District Court granting the defendant's motion for a new trial, which the District Court had no jurisdiction to grant in the first place under Rule 50(b), Federal Rules of Civil Procedure, after ten days following the verdict. Plaintiff Tsai had brought an action to recover damages for personal injuries received in a three-car collision against Mound Motors, Inc. and Rosenthal, operators and owners of two of the three involved motor vehicles. In that case, both plaintiff and defendant appealed from an Order of the District Court which set aside a judgment entered upon special verdicts returned by the jury which awarded plaintiff damages against defendant, Mound Motors, Inc., denied plaintiff relief against the defendant Rosenthal and denied Mound Motors, Inc. relief on its cross-complaint against Rosenthal. The Court granted a new trial on plaintiff's claim against the defendants, Mound and Rosenthal, limited to the issue of damages. On an appeal, the parties treated the questions presented as jurisdictional questions—namely, whether the District Court had power or jurisdiction to order a new trial upon its own motion, since the Court had not acted within ten days after the entry of judgment. The Court of Appeals held the matter was reviewable on appeal and stated:

"Where the jurisdiction of the court to vacate judgment and grant a new trial is challenged, an

appeal will lie to review the power or jurisdiction of the court to make such order. Phillips v. Negley, 117 U.S. 665 . . ." (297 F.2d 614, 616)

The Court of Appeals stated:

"It is undisputed that the court action here took place more than ten days after verdict and the entry of the judgment Thus the court was without jurisdiction to grant a new trial upon its own motion as it purported to do . . . (and) . . . also lacked jurisdiction to grant a new trial limited to damages only . . ." (297 F.2d 614, 617).

The decision in *Darlington v. Studebaker-Packard Corp.* (7th Cir. 1959), 261 F.2d 903, involved an appeal in a patent infringement action from an Order of a District Court denying plaintiff's motion that he disqualify himself to hear a motion to vacate a judgment of dismissal for non-prosecution. The Court of Appeals had jurisdiction to hear the appeal in the *Darlington Case* under 28 U.S.C.A. Section 1291, for the appeal was obviously from a *final* judgment of the District Court *denying* a motion filed pursuant to Rule 60(b) to vacate a judgment of dismissal.

Russell v. Cunningham (9th Cir. 1960), 279 F.2d 797, involved an appeal from an Order of the District Court of Guam *denying* the plaintiff's motion for relief from an order of dismissal with prejudice for lack of prosecution and also involved an appeal from an Order of the District Court for the Northern District of California dismissing plaintiff's complaints insofar as they stated any claims against the principal defendant. The principal question in the *Russell Case* was whether the

denial of a motion under Rule 60(b) was appealable. The Court of Appeals for the Ninth Circuit merely affirmed the rule that an order denying a 60(b) motion *terminates* proceedings in the District Court and therefore is a final and appealable order. The issue was not whether an order granting a motion under Rule 60(b) was appealable.

Therefore, it is apparent that petitioner has failed to ditstinguish between (1) the decisions involving appeals from Orders wherein the District Courts acted beyond their jurisdiction in vacating default judgments, and (2) decisions involving appeals from Orders where the appellant merely alleges that the District Courts abused their discretion in vacating default judgments. As pointed out by Kalodner, Circuit Judge:

> "... it shouldbe noted that plaintiff does not contend that the District Court acted beyond its jurisdiction in vacating the default judgment as was the case in *Demeretz v. Daniels Motor Freight*, ... F.2d ..... (3d Cir. 1962)."

CONCLUSION

Respondent respectfully submits that the Order of the District Court vacating the default judgment has done no harm to petitioner except to require him to prove his case. It has decided nothing against him. All that the Order has done is to give the respondent its day in court. If a jury renders a verdict for petitioner after a trial, the petitioner will be entitled to receive the amount of his claim plus interest and costs. There has never been any claim by petitioner that the respondent is and will be unable to pay any judgment rendered against it. If a jury returns a verdict in favor of the respondent after a trial, then it would be obvious that the petitioner was not entitled to a default judgment in such a substantial amount in the first place.

Wherefore, respondent prays that the petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit be denied.

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